

No. 9(1)82-PV-6Lab-10254.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Mahalaxmi Ice Factory, Kathmandi, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 96 of 1976

between

SHRI CHANDER BHAN SHARMA, WORKMAN AND THE MANAGEMENT OF M/S MAHALAXMI ICE FACTORY, KATHMANDI, ROHTAK.

Present.—

Shri S.N. Vats, for the workman.

Shri Surinder Kaushal, for the management.

#### AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/RK/433-A-76/43416, dated the 23rd November, 1976 under section 10(i)(c) of the I. D. Act for adjudication of the dispute existing between Shri Chander Bhan Sharma, workman and the management of M/s. Mahalaxmi Ice Factory, Kathmandi, Rohtak. The term of the reference was:—

“Whether the termination of services of Shri Chander Bhan is justified and in order? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed:—

1. Whether Shri Chander Bhan Sharma was employed with the management concerned as a workman on the date of termination of his services?
2. If yes as per reference ?

The workman examined Shri Banwari Lal Saksaria, Partner respondent-management, Shri Ran Singh, son of Suraj Mal, resident of Marodi Jatan, Shri Bijender Singh son of Ran Singh, resident of Marodi Jatan and himself as his witness and closed his case. The management did not adduce any evidence on issue No. 1 and closed their case. I heard the learned representatives of the parties and decide the issue as under:—

**Issue No. 1.**—WW-1 has stated that he had brought the attendance register Ex. W-1 to W-3 and cash book for the year 1973-74 relating to the period from 13th July, 1974 to 13th November, 1974 and the entries in the attendance register and the cash book were in the hand of Shri Chander Bhan, workman. He further stated that the slips relating to sale of Ice used to be issued to the customers. He further stated that out of 3200 slips issued in 1974 season the workman issued only 695 slips. In his cross-examination the witness stated that in the attendance register the workman has written his designation against his name as Manager. The entries being in his own hand. He further stated that all the supervisory work of the factory was being done by the workman. He could appoint and terminate the workmen. Ex. W-5 and W-6 bore the signatures of the workman as Manager and occupier. The letters from Ex. W-7 to W-12 have been signed by the workman as Manager and were addressed to various government officers of different departments.

WW-2 has deposed that the workman was working as clerk for issuing slips of Ice and for recording attendance of other employees and for disbursing the pay to the employees. In his cross examination he stated that previously his attendance was recorded by Mistri Jogi Dass but during last days this was done by Chander Bhan but he could not say whether the attendance register shown to him were in the hand of Shri Chander Bhan, workman.

The workman has deposed that he used to maintain cash books. He was performing the duties of an Accountant. He used to issue slips of sale of Ice, disburse pay to the employees. His pay was Rs. 300 per month. The owner of the factory lived at Agra and used to come to the factory occasionally. He had to appear on behalf of the management in Sales Tax cases and for that very reason he was shown as Manager. In his cross-examination he admitted that he was President of the Rohtak Ice Factory Owners Association. He admitted his signatures on Ex. MX-1 to Ex. MX-6. He also admitted his signatures on Ex. W-5 to W-12. He also admitted that he has designated himself in Ex. W-1 to W-3 as Manager. He denied as incorrect that he took the factory on lease in the year 1970 but he admitted as correct that he signed before the Sub-Registrar, Rohtak on the lease deed. He further stated that that was got done from him so that the building could be vacated easily otherwise the lease deed was executed in favour of Mool Chand-Bal Kishan. He further admitted that he did not make any complaint in this regard to any authority. He denied as incorrect that he had all the managerial powers to act on behalf of the management. Letter pads Ex. MX-2, MX-3 got printed by him but the number of such letter pads was not known to him.

From the evidence on the record it is fully established that the workman was doing the managerial work which was his main duty as per his own admission of his signatures on the letters addressed to different government departments as well as his admission of being a President of the Owners Association as well as designated himself as Manager in attendance register as well as in form no. 2 under Factories Act, 1948 on Ex.W-11 and W-6 though he also used to perform some clerical work. He also admitted that the owner of the factory resided at Agra and visited the factory occasionally. On the basis of the discussion made above I hold that Shri Chander Bhan was mainly employed to do managerial and supervisory work and as such is not a workman in the term defined under section 2(S) of the I.D. Act and as such is not competent to raise a dispute under section 2(A) of the Act not being an industrial workman. The issue is accordingly decided against the workman.

In view of the above discussion I answer the reference and give my award that Shri Chander Bhan is not a workman and the reference is bad in law and not capable of adjudication while returning the same in these terms.

Dated the 18th September 1982

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court Haryana, Rohtak.

Endst. No. 2205, dated 28th September, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

No. 9(1)82-PV-6Lab./10271.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to published the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of General Manager, Haryana Roadways, Bhiwani.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 2 of 1979

between

SHRI DHARAM PAL, WORKMAN AND THE MANAGEMENT OF GENERAL MANAGER,  
HARYANA ROADWAYS, BHIWANI

Present:— Shri Sham Sunder Gupta, for the workman.  
Shri Vijay Vir Singh, for the management.

#### AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/HSR/62-78/60350, dated 29th December, 1978 under section 10(i) (c) of the I.D. Act for adjudication of the dispute existing between Shri Dharam Pal workman and the management of M/S General Manager, Haryana Roadways, Bhiwani. The term of the reference was :—

Whether the termination of services of Shri Dharam Pal was justified and in order ? If not to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed :—

1. Whether the enquiry conducted by the management was fair and in compliance with the rules and natural justice and the law ?
2. As per reference ?

The management examined Shri B.S. Manchanda, Accounts Officer, Excise and Taxation Department Haryana as MW-1 and Shri Rajinder Parshad, Clerk, respondent management as MW-2 and closed their case. The workman examined himself as his witness and closed his case. I heard the learned representatives of the parties and decide the issues as under:—

Issue No. 1.—MW-1 deposed that he had seen the enquiry file. He was appointed Enquiry Officer,—vide order Exhibit M-1, issued notices for summoning the parties Exhibit M-2. The statements of Shri Daya Kishan and Shri Nafe Singh, prosecution witnesses were recorded in the presence of the workman who cross examined them. He asked the workman to produce his defence evidence who refused to produce any and the enquiry was adjourned to 8th December, 1976 but the statement of the workman was actually recorded on 4th January, 1977. He submitted his enquiry report on 22nd January, 1977 which was Exhibit M-6. He further stated that he afforded two opportunities to cross examine the witness. The workman did not raise any objection regarding enquiry proceedings. In his cross examination the witness gave out that he did not remember on whom he place the onus to prove the guilt. Explaining this he stated that he did not remember whether he required from the management to prove the workman guilty or wanted the workman to prove himself not guilty. He further stated that he was not satisfied on the basis of the evidence produced by the management that the guilt of the workman and the charges levelled against him were proved beyond doubt.

MW-2 deposed that the workman was given show cause notice Exhibit M-10. The workman replied the show cause notice,—vide Exhibit M-11. The workman was asked to appear for personal hearing, vide Exhibit M-12. The services of the workman were terminated,—vide Exhibit M-13.

The workman appearing as his own witness deposed that he had been working with the respondent for the last four years prior to his termination. He received the suspension order Exhibit WW1/1. He was not shown any record before his reply to the chargesheet. The Enquiry Officer was leading the evidence of the Inspectors who were the management witnesses. He was not given the opportunity to cross examine them. His statement was recorded during the enquiry which is Exhibit WW-1/2. He was cross examined by the Enquiry Officer himself. The Enquiry Officer did not allow him to lead any defence evidence. In his cross examination he has admitted as correct that all the questions from the witnesses recorded in Exhibit WW-1/3 and WW-1/4 were asked by the Enquiry Officer but however there were his signatures at point 'A' with writing to the effect that he had not to ask any more questions. He did not make a complaint to the General Manager that he was not allowed to ask question from the witnesses. He admitted the noting at point 'B' on Exhibit WW-1/4 being correct and was signed by him. He admitted as correct that while his statement was recorded he was given the opportunity to produce his defence evidence.

From the statement of the workman it is clear that the workman was given full opportunity of defence and the version of the workman that the Enquiry Officer put question to the witnesses examined by the management is wrong and cannot be relied upon in view of his admission that he put his signatures on Exhibits WW-1/3 and WW-1/4 and the remarks written there on being correct. No objection of not showing the record to the workman was brought in the notice of the Enquiry Officer nor to the management by the workman and that too cannot be accepted as true. I am therefore of the opinion that the workman was given reasonable opportunity of defence and for cross examining the management witnesses and to that extent the enquiry is fair and in accordance with the principle of natural justice. But as regards the enquiry findings given by the Enquiry Officer these are not based on the evidential material which did not point to the guilt in respect of the charge against the workman. The Enquiry Officer has not considered the contradictions in the statements of the Inspectors. Shri Daya Kishan has stated that the bus was going from Dadri to Mohindergarh. He took unpunched tickets of 40 paise denomination AB series from the workman and marking them P-1 to P-18 were attached with the report while in his cross examination he admitted that the tickets of 40 paise denomination were in the hands of the passengers. He further admitted in his cross examination that these tickets were not punched in the same manner and had been punched wrongly. While Shri Nafe Singh has stated that the bus was going from Dadri to Narnaul and further stated that the workman tried to punch the tickets of 40 paise denomination but could not punch correctly and he was not successful in giving them to the passengers. The findings of the Enquiry Officer that neither the prosecution nor the defence could give sufficient evidence to arrive at a definite opinion beyond doubt is a erroneous on the face of the evidence on the enquiry file and the evidence produced by the workman is more reliable in the presence of so many material contradictions in the management evidence. Any reasonable person could have arrived at a definite conclusion on the basis of the material present on the record that the management failed to prove the charges levelled against the workman and the version of the accused that the passengers had purchased tickets for Mohindergarh and the tickets had been issued accordingly and they changed their mind to proceed to Hudina seems definitely correct. The Enquiry Officer has not arrived at a definite finding. It is also pertinent to note that the Enquiry Officer has not held the workman guilty and the charges proved against the workman. Even on the basis of his findings the General Manager has passed the extreme punishment of dismissal agreeing with the report which could not have been passed if the General Manager had applied his mind. On the basis of above discussion I am constrained to hold that the enquiry findings are perverse as he had failed to consider the relevant evidence in holding that the allegation could not be discarded altogether. He has not given any definite finding and the same is vague. I accordingly decide the issue against the management.

*Issue No. 2.*—In view of my findings on issue No. 1 that the Enquiry findings are perverse it has been held in 1982 Lab. I.C. page 261 by the Supreme Court that if the findings of the Enquiry Officer in domestic enquiry are found perverse there was no need to give another opportunity to the employer to supplement or improve the evidence adduced in the enquiry. I am also of the opinion that the management has no other way of proving the charges except the evidence produced by them in the course of enquiry and it is not justified or lawful to give another opportunity to the management in view of the decision in the case cited above. The termination of the workman on the basis of the charges which are not proved against him is neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. No order as to costs. The reference is answered and returned accordingly.

Dated the 24th September, 1982.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 2221, dated 28th September, 1982

Forwarded (four copies) to the Secretary to Government, Haryana. Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

M. KUTTAPPAN,

Commissioner and Secretary to Government, Haryana,  
Labour and Employment Departments.